

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

WP(C).No. 35480 of 2005(W)

PETITIONER:

JOHN CHRISTOPHER K.A. KURISINGAL HOUSE,
KANDAKKADAVU, KOCHI 8.

BY ADV. SRI.M.POLY MATHAI
SRI.P.CHELLAPPAN

RESPONDENTS:

1. THE DIRECTOR OF FISHERIES,
VIKAS BHAVAN, THIRUVANANTHAPURAM.
2. THE DEPUTY DIRECTOR OF FISHERIES,
SALIM ALI ROAD, KOCHI.
3. JOHNSON, S/O.ALEXANDER, EZHUTHAIKKAL,
KANNAMALI, ERNAKULAM DISTRICT.

ADDL. RESPONDENTS:

4. THE KANDAKKADAVU PADASEKHARAM
REP. BY ITS PRESIDENT SHRI.BENNAN VARGHESE
VADASSERY HOUSE, CHERIYAKADAVU, KANNAMALI
KOCHI - 682 008

(IMPLEADED AS PER ORDER DT. 14.2.06 IN I.A. 1335/06)

5. V.T. ANTONY
VACHAKKAL HOUSE
GANAPATHYKADU MURI
CHELLANAM P.O. (N) KOCHI

(IMPLEADED AS ADDL 5TH RESPONDENT VIDE ORDER DT. 26.2.07 IN I.A.
2684/07)

6. A.M. PETER, AZHEKKAL HOUSE
KANNAMALI P.O., ERNAKULAM DIST.

(ADDL. R6 IS IMPLEADED VIDE ORDER DT. 26.2.07 IN I.A. 2360/07)

R3 BY ADV. SRI.K.G.BALASUBRAMANIAN
ADDL. R4 BY ADV SRI.DINESH R.SHENOY
R1 & 2 BY GOVERNMENT PLEADER SMT. T.B. RAMANI
ADDL. R5 BY ADV SRI.N.N.SUGUNAPALAN (SR.)
SRI.S.SUJIN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 25/09/2007, ALONG WITH WPC NO. 34741 OF 2005 THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P(C) 35480/05

PETITIONER'S EXTS:

- EXT.P1: TRUE COPY OF JUDGMENT IN W.P(C) NO: 2184/05 DT. 20.6.2005
- EXT.P2: -DO- IN W.A. NO: 1652/05 DT. 16.8.2005
- EXT.P3: -DO- OF PROCEEDINGS OF 1ST RESPONDENT DT. 20.10.2005
- EXT.P4: -DO- OF THE REGULATION OF PRAWN FISHING IN PRIVATE WATERS RULES, 1974
- EXT.P5: -DO- OF NOTICE ISSUED BY PETITIONER TO THE 2ND RESPONDENT DT. 7.12.2005
- EXT.P6: -DO- OF THE ACKNOWLEDGEMENT RECEIPT DT. 8.12.2005
- EXT.P7: -DO- OF WRITTEN STATEMENT FILED BY 2ND RESPONDENT IN O.S. NO: 238/96
- EXT.P8: -DO- OF THE NOTICE DT. 8.10.96 TO 2ND RESPONDENT
- EXT.P9: -DO- OF THE 2ND RESPONDENT DT. 15.10.2005
- EXT.P10: -DO- OF NOTICE OF 1ST RESPONDENT DT. 10.10.2005
- EXT.P11: -DO- OF THE AFFIDAVIT FILED BY THE FISHING CONTRACTOR A.M. PETER DT. 12.1.2007
- EXT.P12: -DO- OF THE LETTER DT. 18.12.2006 TO THE 2ND RESPONDENT
- EXT.P13: -DO- OF THE AFFIDAVIT FILED BY PRESIDENT OF 4TH RESPONDENT
- EXT.P14: -DO- OF THE RELEVANT PORTION OF THE JUDGMENT IN O.S.62/05 OF THE SUB COURT, KOCHI DT. 18.8.06
- EXT.P15: -DO- OF THE RECEIPT ISSUED BY SHRI. RAJEEV
- EXT.P16: -DO- OF CONSENT LETTER DT. 20.10.2006

RESPONDENTS' EXTS:

- EXT.R4A: TRUE PHOTOCOPY OF THE BYELAW OF THE KANDAKKADAVU PADASEKHARAM
- EXT.R4B: -DO- OF THE BYELAW OF THE KANDAKKADAVU PADASEKHARAM
- EXT.R4C: -DO- OF THE PLAINT FILED BY THE PETITIONER IN O.S. NO: 56/04 OF MUNSIFF COURT, KOCHI
- EXT.R4D: -DO- OF THE WRITTEN STATEMENT FILED BY THE PETITIONER IN O.S.56/04, MUNSIFF COURT, KOCHI

EXT.R4E: TRUE PHOTOCOPY OF THE PLAINT FILED IN O.S. NO: 36/2006, SUB COURT, KOCHI

EXT.R4F: -DO- OF THE JUDGMENT IN W.A. NO: 793/2006, HIGH COURT OF KERALA

EXT.R4G: -DO- OF THE JUDGMENT DT. 23.10.2000 IN O.S. NO: 238/1996 SUB COURT, KOCHI

EXT.R4H: -DO- OF THE MINUTES OF THE MEETING OF THE EXECUTIVE COMMITTEE OF THE KANDAKKADAVU PADASEKHARAM DT. 17.3.2007

EXT.R5A: -DO- OF THE AGREEMENT ENTERED INTO BETWEEN THIS RESPONDENT AND THE INDIVIDUAL CULTIVATORS

EXT.R5B: -DO- OF THE CONSENT GIVEN BY SHRI. STANLEY

EXT.R5C: -DO- SHRI. PETER PONVELI

EXT.R5D: -DO- SHRI. SEBASTIAN WILLIAM

EXT.R5E: -DO- SHRI. GEORGE KARIPPEAL

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/TRUE COPY/

P.A. TO JUDGE

THOTTATHIL B. RADHAKRISHNAN, J.

W.P.(C). Nos. 34741/2005-J & 35480/2005-W

Dated this 25th day of September, 2007.

JUDGMENT

“C.R.”

1. The earnest efforts to amicably settle the disputes in this case, relating to collective farming, in the sector of prawn breeding, have turned futile, necessitating the issuance of this judicial order whereby, at least, a good lot of the disputes would continue to remain undecided.
2. The petitioner in W.P.(C). 35480/2005 is Sri. John Christopher, a member of the Kandakkadavu Padasekharam, the petitioner in W.P.(C). 34741/2005.
3. The Padasekharam is an expanse of 560 acres of which, 444 acres are paddy fields (Nilam). The remaining, about

116 acres, consist of canals, boundary markings etc. Different individuals own the paddy fields. The ownership of about 65 acres of water canals and outer boundary is also with them. – See the order-dated 20.5.2005 issued by the Director of Fisheries (Ext.P9 in W.P.(C). 34741/2005). Out of 65 acres, 48 acres of the water channels are first auctioned out every year, for prawn fishing. The right to fish from the paddy fields and the rest of the water channels is purchased by the contractor, on individual basis, after negotiating with the respective owners. Going by Ext. P9 order, Sri. John Christopher, who owns 8.79 acres in the Padasekharam, had not granted consent to the contractor for prawn fishing from that property.

4. Sri.John Christopher filed WP(C).No.2184/2005. That led to judgment dated 28th June, 2005 directing an enquiry into one of his complaints which was stated to be pending. The Padasekharam filed W.A.1652/2005. That was disposed of by judgment dated 16-8-2005 directing that the grievances of Sri.John Christopher shall be examined by the Director of Fisheries with notice to the Padasekharam also. The parties were relegated to the Director of Fisheries to raise all

contentions, with a direction to pass appropriate orders in accordance with law.

5. In exercise of powers conferred on the State Government by Section 22 of the Travancore Cochin Fisheries Act, 1950, hereinafter referred to as the “Act”, Regulation of Prawn Fishing in Private Waters Rules, 1974, for short, the “Rules”, were made and issued by the Government. Those Rules govern prawn fishing and issuance of licence, which is mandatory for prawn fishing in the State of Kerala.
6. Rule 7 of the Rules provides that in the case of application for licence to carry on prawn fishing in private waters and paddy fields by a person other than the pattadar or inamdar, the licence will not be granted without the consent of the pattadar or inamdar, as the case may be. The consent certified by the concerned village officer should be produced along with the application for licence.
7. In terms of Rule 7 of the Rules, it is mandatory that the statutory authority shall not grant a licence on any application

by a person who is not pattadar or inamdar unless the application is accompanied by the consent, certified by the concerned village officer.

8. When the rule requires that consent letters are to be produced and licences are to be issued only on the basis of such consent letters, a licence so granted, has also to be confined to the extent of the land in relation to which the relevant consent has been duly given. This means that if any pattadar or inamdar of any portion of a Padasekharam does not give consent, a licence in terms of the Rules cannot be granted in relation to that portion of the Padasekharam.

9. But, that does not also mean that no licence can be granted in relation to those portions of the Padasekharam for which consent letters have been issued and duly certified by the village officer in terms of Rule 7. Merely because a few of the owners of certain portions of a Padasekharam fail to reach at a consensus with the contractor and thereby refuse consent, that does not, and cannot, impinge on the right of the owners of the other portions of the Padasekharam to consent and

thereby put their property to productive and profitable use. Such right can be directly held to be available within the purview of Article 19(1)(g) of the Constitution of India and, at least, in the case of marginalized persons and communities, that could also be referable to Article 21, having regard to the fact that the Padasekharam may consist of even parcels held by small holders, who depend on the activity of farming or other forms of agriculture, for livelihood.

10. In view of the above, the impugned Ext.P9, taking the view that the licence for prawn fishing can be given only after getting consent from all the land owners, after an agreement is reached at, by the contractor, the land owners and the Padasekharam Samithi is in excess of authority and it has to be read down to mean that any licence granted to a contractor on the basis of the consent letters will relate only to the properties in relation to which consent letters have been duly issued. Ext.P9 shall stand regulated by this declaration.

11. Incidentally, it also needs to be noticed that transparency of the proceedings of the Inspector of Fisheries in relation to

grant of licence can be easily maintained, if the Inspector ensures that the certified consent letters as are placed before him are available in his files. Even in cases where large extents of properties are involved in a Padasekharam, all individual consent letters with all necessary particulars are to be placed among the records of the Inspector of Fisheries after ensuring that such consent letters are duly certified by the village officer. Apart from providing transparency to the proceedings, this will also ensure that there would be reliable materials on record in case of any controversy between the private parties.

12. In so far as the Padasekharam and Sri. John Christopher are concerned, it is rather painful to notice that congenial actions expected in collective sector of farming have failed to resolve the bickerings between John Christopher and the Padasekharam. For two consecutive years, John Christopher had to file litigations before the Civil Courts. Decrees were passed in his favour regarding the amounts that are to be paid to him by the contractor who carried on the activities during the relevant years. In so far as the years in question are concerned, the contractor is yet another person and the

decrees in the earlier case would not bind him, whatever be its evidentiary value, if at all, in terms of the Evidence Act.

13. The apparent conflict between the parties would raise good number of practical issues. The entire area is water logged. John Christopher may know the boundaries of his paddy fields. Other members of the Padasekharam may know the land marks to identify their individual holdings. The common holdings may also be identified. But, the prawns, the other crustacea, pisces and similar water borne, would know no boundaries when they move freely, unknowing that, to the homo-sapiens, they are meant only to be harvested for a delice, or to add on to material wealth. When commercial intervention is made with natural resources, the likelihood of one being enriched at the cost of another, cannot be ruled out. John Christopher may have a civil right to be enforced. But it is not within the province of this Court to enter on an adjudication of such right and remedies. When it becomes necessary to resolve disputes of such nature, the wealth of legal literature has necessary precedents, which would advise the manner in which such issues will have to be resolved on

the basis of legal evidence. The parties have, therefore, to stand relegated to the civil courts for such adjudication and relief, unless wisdom dawns on them, prompting further recourse to alternate dispute resolution mechanisms.

14. During the course of these cases, different interlocutory orders ultimately led to a meeting of the general body of the Padasekharam, presided by the Additional Tahsildar. That also did not result in the resolution of the disputes. John Christopher was paid an amount of Rs.1,00,000/- by the fifth respondent, who was the contractor for the relevant year, 2006-2007. This payment, under orders of this Court, was necessarily on a purely provisional basis. Therefore, while leaving open all questions regarding entitlement of John Christopher to move the competent Court and seek remedies for quantifying any compensation that may be due to him, the right to the aforesaid amount of Rs.1,00,000/- would also depend on such decree that may be passed by the Civil Court. In the event of John Christopher not initiating a litigation, the fifth respondent is left at liberty to have an adjudication before the appropriate Court regarding the correctness of the

amount paid and if it is held that the amount of Rs.1,00,000/- paid to John Christopher is excessive, the fifth respondent would be entitled to return of that amount of Rs.1,00,000/- or part thereof, in terms of that decree.

15. For the aforesaid reasons, these writ petitions are disposed of in the following terms:-

(i). The order dated 20.10.2005 issued by the Director of Fisheries [Ext.P9 in WP(C). No.34741/2005] would stand modified to the extent that the licences referred to therein shall be governed by the declaration made in paragraph No.10 above.

(ii). The Inspector of Fisheries and superior officers will be guided by the observations made in this judgment with regard to Rule 7 of the Rules.

(iii). W.P.(C).35480/2005 is closed without prejudice to the right of the petitioner therein to move the competent Civil Court for adjudication and decree regarding any claim that he has towards any amount that may be due to him. The rights of the fifth

respondent therein, are also left open, as stated in paragraph No.14 above.

(iv). Since the minutes recorded in the minutes book prepared and produced by the Additional Tahsildar, Cochin, regarding the meeting held on 15.7.2007, relate to the meeting of Padasekharam, the said book is also handed over to the learned counsel for Padasekharam along with the other records produced by the Padasekharam.

Sd/-
THOTTATHIL B. RADHAKRISHNAN,
Judge.

mrCS

-True copy-

P.S. to Judge.